

In the Matter of Merchant Mariner's Document No. Z-832955  
Issued to: CLINTON LEROY RING

DECISION AND ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

747

CLINTON LEROY RING

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 25 September, 1953, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-832955 issued to Clinton Leroy Ring upon finding him guilty of misconduct based upon two specifications alleging in substance that while in the service of the American SS COLUMBIA HEIGHTS as an able seaman and acting under authority of the document above described, on or about 16 June, 1953, while said vessel was in the port of Iskenderum, Turkey, he failed to join his vessel upon its departure; and he wrongfully had a quantity of hashish in his possession. A third specification was found not proved and dismissed by the Examiner.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection. He entered a plea of "guilty" to the specification alleging the failure to join and a plea of "not guilty" to the specification alleging possession of hashish.

Thereupon, the Investigating Officer made his opening statement. The Investigating Officer introduced in evidence the testimony of seven U. S. Customs' employees, the Master of the ship and two members of the crew including one of the two seamen who shared the same forecabin with Appellant before he failed to join the ship. This roommate, Van Buren, testified that about six hours after the ship had departed from Iskenderum on 16 June he entered his forecabin and saw the other roommate, Wilson, bending over the shelf at the head of the bunk which had been used by Appellant; that there was one match box on the latter bunk; and that Wilson then removed three additional match boxes from between the shelf and a piece of cardboard which covered part of the shelf. According to Van Buren's testimony, he was led to believe, by Wilson's words and conduct, that Wilson had just discovered the four match boxes while they were on the shelf. It was later determined that one of these boxes contained four marijuana cigarettes and the other three boxes contained slabs of hashish (concentrated marijuana). Wilson did not testify; nor did Appellant submit any evidence in his defense.

The Record presented here is not adequate for the purpose of making relevant "Findings of

Fact" as required by law. On appeal, it is contended that possession of the hashish by Appellant was not proved. In his decision, the Examiner stated that he believed Van Buren was telling the truth. But even accepting his testimony as to what he heard and saw when he entered the forecandle, the facts established are only sufficient from which to infer that Wilson actually found the match boxes on the shelf by Appellant's bunk. (Belief of Van Buren's testimony does not conclusively establish this as a fact.) Then it is necessary to draw the additional inference that Appellant had placed the boxes on the shelf at some time prior to six hours before Wilson found them.

Thus, we have an inference based on another inference; and this does not conform with the rules of evidence because it amounts to mere conjecture. There must be proof of one fact from which the inference of another fact is to be drawn. The necessary proof, upon which the inference of Appellant's guilt could properly be based, would be direct evidence in the form of testimony by Wilson that he found the match boxes on the shelf; and evidence indicating that no other seaman had the opportunity to place or had placed the boxes on the shelf after Appellant left the ship. Only then could a prima facie case be established by substantial evidence.

Therefore, it is necessary to obtain Wilson's testimony by appearance at the hearing or by deposition. After examination and cross-examination of Wilson, a finding as to his credibility would be more significant than a finding as to Van Buren's credibility concerning what he saw Wilson do and heard him say when Van Buren entered the forecandle.

Since Van Buren had packed Appellant's belongings to send them ashore before the ship got underway from Iskenderum, Van Buren should be recalled as a witness in order to clarify his testimony as to whether the piece of cardboard was on the shelf at the time when he removed some of Appellant's belongings from the shelf at the head of his bunk. (See Q. and A. No. 5 on page 33; Q. and A. Nos. 1, 2 and 3 on page 34.)

The order of the Examiner dated at New Orleans, Louisiana, on 25 September, 1953, is REVERSED, VACATED, AND SET ASIDE. The Record is remanded to said Examiner with directions to reopen the hearing and conduct further proceedings not inconsistent with this decision.

Unless evidence is adduced which more intimately connects Appellant with the boxes of hashish, the specification alleging wrongful possession of hashish should be dismissed. If this occurs, an appropriate order should be entered with respect to Appellant's failure to join his ship at Iskenderum. In connection with this, consideration should be given to the fact that Appellant surrendered his Merchant Mariner's Document No. Z-832955 to the Examiner on or before 25 September, 1953.

REVERSED and REMANDED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated Washington, D. C., this 7th day of July, 1954.